IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 2899 of 2004

M/s Podwal Brothers ... Petitioner
by its partner Mr.S.K.Podwal
vs
1. Smt Kaushalyabai Eknath Jagtap ..Respondents
& ors.
..
Mr.R.M.Nakhawa for Petitioner
Mr.V.V.Savaji for Mr.P.B.Shah for Respondent nos. 1 to 3.

CORAM : D.G.KARNIK, J
DATE: 10TH AUGUST, 2004.

P.C.

1. Rule. By consent, rule made returnable forthwith. Heard learned counsel for the parties.

2. By this petition, the petitioner tenant challenges the judgment and order dated 29th January, 2004 passed by the IVth Additional District Judge, Pune dismissing Civil Appeal No.676 of 2000 and thereby confirming a decree for possession dated 3rd July, 2000 passed by the Small Causes Court, Pune in Civil Suit No. 87 of 1997.

The facts relevant for the purpose of this writ petition are stated below :

3. The respondents are the owners of the property known as Jagtap Building situate at City Survey No. 8/6 Gultekdi Mukund nagar, Pune-Satara Road, Pune-37. There are shops in front side on the ground floor and residential flats on the upper floors. The petitioner is a tenant occupying one shop bearing shop no. 5 situated on the ground floor admeasuring about 11 x 29 ft. (for short the suit premises) On 3rd February, 1997 the respondents filed a suit bearing R.C.S. No.87 of 1997 against the petitioner for possession of the suit premises on the ground of arrears of rent, non user for a period of six months immediately preceeding the suit and reasonable and bonafide requirement. It appears that the attempt to serve the summons in usual course were unsuccessful and the suit summons was served on the petitioner by affixing the summons to the suit premises which were found to be closed. An ex parte decree was passed on 27th November, 1997. On appeal bearing Civil Appeal No.96 of 1998, the ex parte decree was set aside and the matter was remanded back to the trial court for hearing afresh after giving an opportunity to the petitioner to file a written statement. Thereafter, the suit was heard on merits and by a judgment and order dated 3rd July, 2000 the Small Cause Court decreed the suit on the ground of non user for a period of more than six

months immediately preceeding the date of filing of the suit and also on the ground of reasonable and bonafide requirement of the respondent. The judgment and order of the Small Causes Court was

affirmed by the District Court on 29th January 2004. That judgment is impugned in this petition.

4. The respondent no. 3 Madhukar examined himself on oath. He has stated that the suit premises were kept closed at all from the year 1995 till the date of the institution of the suit. The respondents also examined Mr. Sudhakar Nivrutti Patil PW 3 who owns and resides in the neighbouring property. He has also stated that the suit premises were kept closed since 1996. Mr.Ganesh Madhukar Gaikwad, PW 4 has also stated that the suit premises were kept closed since 1995. Photographs were taken of the suit premises to show that the suit premises were kept and the photographer was also examined. The evidence of photographs may not be of much assistance because the photographs would only to show the position at the exact time when the photographs were taken. That photographs would not prove the closure of the premises for a continuous period of six months immediately preceeding the suit. However, evidence of the respondent no. 3 and two witnesses is trustworthy. There is no reason to disbelieve the evidence of Sudhakar Nivrutti Patil the neighbour owner who has stated that the suit premises were kept closed since 1996. The petitioner had renewed the shop Act licence on 12th January, 1993 up to the year 1995. Thereafter, the shop Act licence was not renewed till the suit was filed on 3rd February, 1997. Only thereafter perhaps when the petitioner got a scent of the filing of the suit that the shop Act licence was renewed in August, 1997 i.e. six months after the suit was filed. No explanation was offered in the examination in chief why the Shop Act licence was not required from 1995 till 1997. All this evidence has been considered by the Courts below, who came to the conclusion that the suit premises were not used by the petitioners for the purpose of which they were let out for continuous period of more than six months immediately prior to the suit. The finding recorded by the Courts below is possible and cannot be interfered in exercise of writ jurisdiction under Article 227 of the Constitution of India.

5. The respondent nos. 2 and 3 are brothers aged 44 and 36 years and the respondent no.1 is their mother. There are in all 10 members in their family and they reside on the second floor of the suit building. The respondent no. 2 is a motor mechanic and has no place for carrying on business. He needs the suit premises for carrying on business as a motor mechanic and selling motor spare parts. The respondent no. 3 carries on business of selling of motor batteries in a small place of 8 x 4 sq.ft at the back side of the suit building. The

said place is not enough. There is no enough place for display and of car batteries. The respondents have no other source of income except the rent of the suit building and they therefore require the suit premises for the purpose of business wherein the respondent no.2 would carry on the business of batteries and respondent no.3 would carry on the business of sale of motor parts and as a motor

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mechanic. When this petition came up for hearing on the previous occasion, learned counsel for the petitioner submitted that the place of 8 x 4 ft on the back side was sufficient for the purpose of business and that was a commercial premises. Immediately, learned counsel for the respondents made an offer to give that premises on rent to the petitioner. Time was sought to consider the offer. After taking instructions learned counsel for the petitioner today states that the said place of 8 x 4 sq ft on the back side is not business premsies but is a bathroom and as such not suitable for business. This all the more substantiates the claim of bonafide requirement because the respondents are required to carry on business in a bathroom. The Courts below have held the need of the respondents to be reasonable and bonafide and have given cogent reasons for holding so. I see no reason to interfere in the concurrent finding of the fact reached by the Courts below.

6. As regards the the hardship, the petitioner has admitted thatr there are 10 members in the family of the respondents and the respondents have no other business except the bathroom which is being used by them for business. As against that, the respondents have other premises at Nanapeth and Rastapeth, as held by the trial Court in para 7 of its judgment. In the circumstances, the finding about greater hardship in favour of the respondents is also correct.

7. For these reasons, there is no merit in the petition. Petition is accordingly dismissed. Rule discharged with costs.

8. At the request of the learned counsel for the petitioner operation of this order is stayed for a period of eight weeks subject to the condition that the petitioner shall not create any third party interest or part with the possession of the suit premises.

D.G.KARNIK, J

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